



OFFICE OF
INSURANCE COMMISSIONER

OLYMPIA OFFICE:
INSURANCE BUILDING
P.O. BOX 40255
OLYMPIA, WA 98504-0255
Phone: (360) 753-7300

In the matter of:

PREMERA BLUE CROSS, a
Washington Health Care Service
Contractor

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No. D98-73
ORDER TO CEASE AND DESIST

TO: Premera Blue Cross
Attention: Betty Woods, President
7701 220th St. S.W.
Mountlake Terrace, WA 98043

Pursuant to RCW 48.02.080, Premera Blue Cross (Premera) and its affiliates, administrators, officers, employees and agents are hereby ORDERED to cease and desist from the following conduct: refusing or failing to offer to individuals enrollment in its health benefit plans, and refusing or failing to accept applications from qualified individuals for individual policies.

THIS NOTICE IS BASED UPON THE FOLLOWING GROUNDS:

By letter dated November 23, 1998, to Chief Deputy Commissioner Scully, Premera stated that it had decided to "cease" offering any health benefit plans to any individuals.... Applications for individual policies ... after the date of this letter, will not be accepted."

RCW 48.43.035 provides in relevant part that

"(1) All health carriers shall accept for enrollment any state resident within the carrier's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The insurance commissioner may grant temporary exemption from this subsection, if, upon application by a health carrier, the Commissioner finds that the clinical, financial or administration capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals."

Section 2742 of The Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides in relevant part:

Page 2

“(c)(1). Particular type of coverage not offered.-- In any case in which an issuer decides to discontinue offering a particular type of health insurance coverage offered in the individual market, coverage of such type may be discontinued by the issuer only if (A) the issuer provides notice to each covered individual provided coverage of this type in such market ... at least 90 days prior to the date of the discontinuation...

“(c)(2). Discontinuance of all coverage. (a). In general. Subject to subparagraph (C), in any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the individual market in a state, health insurance coverage may be discontinued by the issuer only if – (i) the issuer provides notice to the applicable State authority and to each individual of such discontinuation at least 180 days prior to the date of expiration of such coverage....

Premera did not secure the approval of the Office of the Insurance Commissioner to discontinue offered individual coverage. Premera did not provide the requisite notice of discontinuance of offering individual health insurance coverage required by HIPAA.

Based upon Premera's November 23, 1998 letter, the OIC has cause to believe that Premera is violating RCW 48.43.035 and HIPAA by ceasing to offer health benefit plans to individuals... and not accepting applications from individuals for health insurance.

NOTICE IS HEREBY GIVEN that the Insurance Commissioner may, in addition to prosecuting an action in court to enforce this order, revoke or suspend the registration of Premera, and/ or impose a fine of \$10,000 per violation, or such other amount as the Commissioner finds appropriate, if Premera fails to comply with this ORDER.

THIS ORDER IS EFFECTIVE FORTHWITH AND IMMEDIATELY AND IS ENTERED this 25th day of November, 1998.



Greg Scully, Chief Deputy Commissioner



Premera Blue Cross

An Independent Licensee of the Blue Cross and Blue Shield Association

7001 220th St. S.W., Mountlake Terrace, WA 98043
P.O. Box 327, Seattle, WA 98111

November 23, 1998

VIA FAX (Original Delivered by Messenger)

Mr. Greg Scully
Chief Deputy Commissioner
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, Washington 98504-0255

RECEIVED
NOV 24 AM 8:05
OFFICE OF WASH.
INSURANCE DEPT.
OLYMPIA, WA 98504

Dear Chief Deputy Commissioner Scully:

Premera Blue Cross (PBC) has provided the Office of Insurance Commissioner (OIC) information regarding problems it is experiencing with "Individual Plan A Standard," the BHP look-alike plan offered by PBC pursuant to RCW 48.44.022(1)(a). By letter dated September 24, 1998, PBC inquired if the OIC would grant PBC an exemption from the requirement to sell a BHP look-alike product imposed, under certain circumstances, by RCW 48.44.022(1)(a), similar to the exemption granted by the OIC to PBC in November 1997. PBC and OIC representatives met on October 1, 1998 to discuss these BHP look-alike issues and to review data presented by PBC at the OIC's request. Pursuant to the discussions at the meeting, PBC submitted a formal request for exemption by letter dated October 7, 1998.

The materials PBC presented at the meeting demonstrate that the current rates of Individual Plan A Standard are inadequate and PBC has incurred substantial losses on this product since its inception. Carriers offering the unsubsidized BHP benefits pursuant to contracts with the Washington State Health Care Authority (HCA), have announced rate increases averaging over 60% to be effective January 1, 1999. Subscribers of the non-subsidized BHP products were notified of these increases and the open enrollment period for the HCA program commenced October 1, 1998. PBC's rates for its BHP look-alike product are significantly lower than the rates to be charged by carriers under the HCA program for similar benefits commencing January 1, 1999. It is anticipated that Individual Plan A Standard will attract many new enrollees in the immediate future from the BHP non-subsidized program who seek to obtain lower cost coverage for similar benefits. OIC statistics demonstrate that PBC's Individual Plan A Standard has from inception, and remains today, the BHP look-alike plan that attracts the most subscribers.

Enrollment in look-alike plans maintained by the major carriers offering this product as of January 1, 1998 were as follows:

CARRIER	ENROLLMENT
Premiera Blue Cross	5,915
Group Health Cooperative of Puget Sound	2,773
Regence Blue Shield	556

As discussed at our meeting, there are approximately 14,000 subscribers in the HCA program who are likely to seek alternative coverage because of the rate increases from their current HCA carriers or because their current carriers will not participate in the HCA program for 1999. Based on data submitted to the OIC, should only half of those subscribers switch to PBC's BHP look-alike plan, PBC would lose in excess of \$5 million on an annualized basis on such new subscribers. The anticipated increase in enrollment on Individual Plan A Standard will not only add to the losses already being incurred by PBC on its current subscribers on this product, but would also amplify the magnitude of future rate increases needed for all PBC individual products which are rated on a community pool basis with the BHP look-alike. For these reasons, PBC requested the exemption from selling the BHP look-alike until a more permanent solution can be implemented. We believe the factors supporting the exemption request are as compelling today as they were when the OIC granted the exemption in similar circumstances in November 1997.

PBC has already received numerous calls about its BHP look-alike product from HCA program subscribers inquiring about alternative coverage to their non-subsidized BHP plans. Based on statements made in those inquiries, it is our understanding that the Office of Insurance Commissioner has been referring those individuals to PBC. We were surprised to learn that the OIC is directing such subscribers to PBC at the same time our request for exemption is pending. Given these circumstances, and our immediate concerns about further losses on the BHP look-alike plan, PBC had limited recourse available other than to cease sale of those products which, pursuant to RCW 48.44.022, was the basis for the obligation to sell the BHP look-alike. RCW 48.44.022(1)(a) states in relevant part, as follows:

"A health care service contractor offering any health benefit plan to any individual shall offer and actively market to all individuals a health benefit plan providing benefits identical to the schedule of covered health benefits that are required to be delivered to an individual enrolled in the basic health plan . . ."

Mr. Greg Scully
November 23, 1998
Page 3

The statute is clear that the obligation to offer a BHP look-alike plan does not apply to health care service contractors that do not offer other individual products. We note that other carriers who sell to particular market segments, other than the individual market, do not offer BHP look-alike plans to individuals. In sum, the obligation to offer the BHP under RCW 48.44.022 has no application if a carrier does not offer other individual health plans.

Accordingly, PBC has ceased offering any health benefit plans to any individuals, including the BHP look-alike. Applications for individual policies postmarked after the date of this letter, or received without a postmark after the date of this letter, will not be accepted. The decision to cease sale of such products, including the BHP look-alike, is fully consistent with PBC's rights under RCW 48.44.022 and other applicable law. Please be assured that PBC intends to renew coverage for existing subscribers to the full extent required by RCW 48.43.035.

PBC has implemented the decision to cease offering individual products with regret. We have remained committed to the individual market through extremely difficult times, while other carriers have either withdrawn from that market segment or otherwise significantly limited their product offerings. As you know, PBC lost in excess of \$70 million dollars on its individual products since the beginning of 1994 and these losses continue to mount. The data submitted at our meeting demonstrates that many subscribers obtain coverage after they experience a medical condition and then drop coverage after receiving service for that condition. Such factors, the concerns about the BHP look-alike product and the inability to obtain rates to cover the cost of coverage in recent years are among the considerations which were the basis for the decision to cease sale of individual products at this time.

Based on previous statements by the OIC, and actions taken in other circumstances by the OIC, PBC has reason to believe that the OIC would oppose PBC's cessation of sales in the individual market, and would seek to require PBC to recommence sale of individual products. PBC believes such actions by the OIC would be inconsistent with PBC's statutory right not to sell individual products. Because of this concern, PBC demands a hearing pursuant to RCW 48.04.010(1) with respect to any act, threatened act or failure to act by the OIC (including but not limited to the issuance of a cease and desist order) which would impede or otherwise interfere with the actions implemented by PBC to cease sale of individual products, including the BHP look-alike product, or which would impede or otherwise impair PBC's right not to offer individual products, including the BHP look-alike product. Pursuant to RCW 48.04.020(1), this demand for hearing stays any act, threatened act or failure to act by the OIC (including but not limited to the issuance of a cease and desist order) which would impede or otherwise interfere with the actions implemented by PBC to cease sale of individual products, including the BHP

Mr. Greg Scully
November 23, 1998
Page 4

look-alike product, or which would impede or otherwise impair PBC's right not to offer individual products, including the BHP look-alike product. The foregoing demand for hearing is made without waiver of any objections to jurisdiction of the OIC to adjudicate issues which PBC has a right to have heard in court proceedings.

While we feel obligated to take the actions described in this letter, and to preserve our rights to take those actions, we are interested in continuing to work with the OIC, the legislature and the governor's office to address the problems in the individual market which have necessitated these actions.

Sincerely,

A handwritten signature in black ink that reads "TAE ANDERSEN". The signature is written in a cursive, somewhat stylized font. The first part "TAE" is written with a long horizontal stroke extending to the left, and "ANDERSEN" follows in a similar cursive style.

Trae Andersen
Senior Vice President

cc: Bethany Weidner, Deputy Insurance Commissioner



Premera Blue Cross

An Independent Licensee of the Blue Cross and Blue Shield Association

Yoram Milo
Executive Vice President
General Counsel

P.O. Box 327
Seattle, Washington 98111
425/670-5970 Fax 425/670-5775

November 25, 1998

VIA FAX (Original by Mail)

Mr. Greg Scully
Chief Deputy Commissioner
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, Washington 98504-0255

Re: Order No. D98-73

Dear Chief Deputy Commissioner Scully:

Shortly before the close of business on November 25, 1998, Premera Blue Cross received your Order No. D98-73.

The Order states that Premera Blue Cross should cease and desist from the following conduct:

“refusing or failing to offer to individuals enrollment in its health benefit plans, and refusing or failing to accept applications from qualified individuals for individual policies.”

By letters dated November 23, 1998 and November 25, 1998, Premera Blue Cross filed demands for hearing pursuant to RCW 48.04.010(1) with respect to the following:

“... any act, threatened act or failure to act by the OIC (including but not limited to the issuance of a cease and desist order) which would impede or otherwise interfere with the actions implemented by PBC to cease sale of individual products, including the BHP look-alike product, or which would impede or otherwise impair PBC's right not to offer individual products, including the BHP look-alike product.”

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STATE OF WASH.
INSURANCE DEPT.
OLYMPIA, WA 98504

Mr. Greg Scully
November 25, 1998
Page 2

Pursuant to RCW 48.04.020(1), such demands for hearing invoked an automatic stay against any act, threatened act or failure to act by the OIC (including but not limited to the issuance of a cease and desist order) which would impede or otherwise interfere with the actions implemented by PBC to cease sale of individual products, or which would impede or otherwise impair PBC's right not to offer individual products. Accordingly, the cease and desist order is stayed by operation of law.

While this letter is not intended to serve as a full discussion of the legal issues raised by the cease and desist order, and those issues will be addressed in the future as appropriate, Premera Blue Cross believes it is legally entitled not to offer for sale individual products and to engage in the conduct the cease and desist order purports to prohibit.

RCW 48.43.035 does not require carriers to sell individual products, nor does it prohibit carriers from ceasing sale of individual products. The provisions cited in Section 2742 of the Health Insurance Portability and Accountability Act (HIPAA) only apply when an issuer discontinues or nonrenews the health insurance coverage of an individual. As stated in Premera Blue Cross' letter of November 23, 1998, Premera Blue Cross is renewing coverage of existing individual subscribers and the cited provisions of HIPAA do not apply in these circumstances.

Please direct future correspondence and other materials relating to the cease and desist order to my attention with a copy to our outside counsel, as follows:

Carol S. Arnold
Preston Gates & Ellis LLP
Suite 5000
701 Fifth Avenue
Seattle, Washington 98104-7078

Sincerely,



Yoram Milo
General Counsel

cc: Carol S. Arnold



Premera Blue Cross

An Independent Licensee of the Blue Cross and Blue Shield Association

7001 220th St. S.W., Mountlake Terrace, WA 98043
P.O. Box 327, Seattle, WA 98111

November 25, 1998

VIA FAX (Original by Mail)

Mr. Greg Scully
Chief Deputy Commissioner
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, Washington 98504-0255

Dear Chief Deputy Commissioner Scully:

By letter dated November 23, 1998, Premera Blue Cross (PBC) informed the OIC that it had ceased sale of individual products to new applicants in Washington state. In conversations yesterday with Office of Insurance Commissioner (OIC) officials to discuss this action, we were advised that the OIC intends to take action to require PBC to recommence sale of individual products. Statements made by the OIC to the media also reflect the OIC's intent to seek to require Premera Blue Cross to recommence sale of individual products.

PBC believes its actions are fully consistent with applicable law. PBC hereby reiterates and reasserts its demand for hearing, as stated in the November 23, 1998 letter. This demand is made pursuant to RCW 48.04.010(1), based on prior statements and actions by the OIC, and based on statements made by the OIC in yesterday's conversation and to the media that the OIC will oppose PBC's action and will seek to require PBC to recommence sale of individual products. Pursuant to RCW 48.04.020(1), such demand for hearing, and the demand by letter dated November 23, 1998, invoke an automatic stay against any act, threatened act or failure to act by the OIC (including but not limited to the issuance of a cease and desist order) which would impede or otherwise interfere with the actions implemented by PBC to cease sale of individual products, or which would impede or otherwise impair PBC's right not to offer individual products.

Sincerely,

Trae Andersen, Senior Vice President

RECEIVED
NOV 30 AM 10:27
STATE OF WASH.
INSURANCE DEPT.
P.O. BOX 40255
OLYMPIA, WA 98504